

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA
(DIVISION 2)

Metwalli v Minister for Immigration and Multicultural Affairs [2025]

FedCFamC2G 677

File number(s):	SYG 90 of 2021
Judgment of:	JUDGE ZIPSER
Date of judgment:	19 May 2025
Catchwords:	MIGRATION – judicial review – decision of Administrative Appeals Tribunal refusing to grant partner visa – whether Tribunal failed to consider or have regard to text messages between applicant and sponsor in considering degree of companionship and emotional support they drew from each other – no jurisdictional error established – application dismissed
Legislation:	<i>Migration Act 1958</i> (Cth) ss 5F, 65, 359A, 368, 476 <i>Migration Regulations 1994</i> (Cth) reg 1.15A, Sch 2 cl 820.211(2)
Cases cited:	<i>Burgess v Minister for Immigration and Border Protection</i> [2018] FCA 69; 259 FCR 197 <i>Minister for Immigration and Border Protection v SZSRS</i> [2014] FCAFC 16; 309 ALR 67 <i>Minister for Immigration and Citizenship v SZGUR</i> [2011] HCA 1; 241 CLR 594 <i>Plaintiff M1/2001 v Minister for Home Affairs</i> [2022] HCA 17; 275 CLR 582 <i>Singh v Minister for Home Affairs</i> [2019] FCAFC 3; 267 FCR 200 at [61] <i>SZOV v Minister for Immigration and Citizenship</i> [2011] FCA 1462; 125 ALD 38 <i>Vo v Minister for Home Affairs</i> [2019] FCAFC 108; 269 FCR 566 <i>W375/01A v Minister for Immigration and Multicultural Affairs</i> [2002] FCAFC 89; 67 ALD 757
Division:	Division 2 General Federal Law
Number of paragraphs:	52

Date of hearing:	29 April 2025
Place:	Parramatta
Counsel for the Applicant:	Mr L Karp
Solicitor for the Applicant:	Immi House Legal
Counsel for the Respondents:	Mr G Johnson
Solicitor for the Respondents:	Mills Oakley

ORDERS

SYG 90 of 2021

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

BETWEEN: **MOHAMED METWALLI**
 Applicant

AND: **MINISTER FOR IMMIGRATION AND MULTICULTURAL**
 AFFAIRS
 First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL
Second Respondent

ORDER MADE BY: JUDGE ZIPSER

DATE OF ORDER: 19 MAY 2025

THE COURT ORDERS THAT:

- (a) The name of the first respondent is amended to “Minister for Immigration and Multicultural Affairs”.
- (b) The application is dismissed.

Note: The form of the order is subject to the entry in the Court’s records.

Note: The Court may vary or set aside a judgment or order to remedy minor typographical or grammatical errors (r 17.05(2)(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 17.05 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth).

REASONS FOR JUDGMENT

JUDGE ZIPSER

INTRODUCTION

1 On 14 January 2021, the applicant lodged an application for judicial review, pursuant to s 476 of the *Migration Act 1958* (Cth) (**Act**), of a decision of the Administrative Appeals Tribunal (**Tribunal**) dated 10 December 2020. The Tribunal affirmed the decision of a delegate of the first respondent refusing to grant the applicant a Partner (Temporary) (class UK) (subclass 820) visa under s 65 of the Act.

2 For the reasons that follow, the application is dismissed.

LEGISLATION

3 Section 5F of the Act provided at the time of the Tribunal's decision in December 2020:

(1) For the purposes of this Act, a person is the *spouse* of another person (whether of the same sex or a different sex) if, under subsection (2), the 2 persons are in a married relationship.

(2) For the purposes of subsection (1), persons are in a *married relationship* if:

(a) they are married to each other under a marriage that is valid for the purposes of this Act; and

(b) they have a mutual commitment to a shared life as a married couple to the exclusion of all others; and

(c) the relationship between them is genuine and continuing; and

(d) they:

(i) live together; or

(ii) do not live separately and apart on a permanent basis.

(3) The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

4 Regulation 1.15A of the *Migration Regulations 1994* (Cth) (**Regulations**) relevantly provided at the time of the Tribunal's decision:

(1) For subsection 5F(3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F(2)(a), (b), (c) and (d) of the Act exist.

(2) If the Minister is considering an application for:

- (a) a Partner (Migrant) (Class BC) visa; or
- (b) a Partner (Provisional) (Class UF) visa; or
- (c) a Partner (Residence) (Class BS) visa; or
- (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

(3) The matters for subregulation (2) are:

- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
- (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
- (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
- (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.

6 Clause 820.211(2) of Schedule 2 to the Regulations relevantly provided at the time of the Tribunal's decision:

An applicant meets the requirements of this subclause if:

(a) the applicant is the spouse or de facto partner of a person who:

(i) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and

(ii) is not prohibited by subclause (2B) from being a sponsoring partner.

...

(d) in the case of an applicant who is not the holder of a substantive visa--either:

(i) the applicant:

(A) entered Australia as the holder of a Subclass 995 (Diplomatic) visa or as a special purpose visa holder who at the time of entry met the requirements of subclause (2A); and

(B) satisfies Schedule 3 criterion 3002; or

(ii) the applicant satisfies Schedule 3 criteria 3001, 3003 and 3004, unless the Minister is satisfied that there are compelling reasons for not applying those criteria.

FACTUAL BACKGROUND

7 The applicant, a citizen of Egypt, arrived in Australia in June 2014 on a visitor visa.

8 In June 2015, the last substantive visa held by the applicant ceased.

9 On 16 August 2016, the applicant applied for a subclass 820 partner visa on the basis of a spousal relationship with an Australian citizen (**Sponsor**). The applicant and Sponsor first met online in June 2016, married in an Islamic ceremony on 9 July 2016, and married in a civil ceremony in early August 2016.

10 On 1 December 2016, a delegate of the first respondent refused to grant the visa on the basis that:

(a) the applicant did not satisfy one of the Schedule 3 criteria in cl 820.211(2)(d)(ii) of Schedule 2; and

(b) there were no compelling reasons for not applying the Schedule 3 criteria.

11 On 20 December 2016, the applicant applied to the Tribunal for review of the delegate's decision.

12 On 18 June 2018, the Tribunal (**Earlier Tribunal**) affirmed the delegate's decision.

13 Following an application to the Federal Circuit Court for judicial review of the Earlier Tribunal’s decision, on 29 January 2019 the Federal Circuit Court by consent issued a writ quashing the Earlier Tribunal decision on the basis that the Earlier Tribunal did not comply with its obligation under s 359A of the Act to invite the applicant to comment on information in an email sent to the Department on 30 January 2017. The Federal Circuit Court remitted the matter to the Tribunal for redetermination according to law.

14 On 10 September 2020, the Tribunal invited the applicant to attend a hearing on 28 September 2020.

15 On 28 September 2020, the applicant attended a hearing before the Tribunal, assisted by a registered migration agent. Two witnesses also gave evidence.

16 On 10 December 2020, the Tribunal made a decision affirming the delegate’s decision not to grant the applicant a partner visa.

TRIBUNAL’S DECISION

17 The Tribunal at [9] stated that the issue before it was whether the applicant was the spouse of the Sponsor within the meaning of cl 820.211(2)(a) of Schedule 2 at the time of application for the partner visa on 16 August 2016.

18 As was evident from the evidence before the Tribunal, the relationship between the applicant and Sponsor “was tempestuous” (Tribunal at [36]) and the relationship ended by January 2017 with “the parties [then] mak[ing] serious allegations against and about each other” (Tribunal at [73]).

19 The Tribunal at [19]-[20] noted that, in determining whether the applicant was the spouse of the Sponsor, pursuant to s 5F of the Act and reg 1.15A of the Regulations, it must consider:

- (c) the financial aspects of the relationship;
- (d) the nature of the household;
- (e) the social aspects of the relationship; and
- (f) the nature of the persons’ commitment to each other.

20 The Tribunal at [21]-[35] considered the financial aspects of the relationship. The Tribunal at [21] noted the applicant’s claim “that the sponsor married him for his money”. The Tribunal at [23] referred to the applicant’s evidence that “the sponsor was financially abusive from the

beginning of the parties' relationship". The Tribunal at [29] referred to the evidence of one of the witnesses "that the applicant was abused and manipulated by the sponsor" and "she questioned the sponsor's intentions related to the parties' marriage". The Tribunal at [33] found that "the applicant provided inconsistent information about the parties' financial matters". The Tribunal at [34] found that "the parties provided inconsistent information about the financial aspects of their relationship". The Tribunal at [35] accepted "the applicant's evidence that he paid for everything and there was no basis of sharing of day to day household expenses".

21 The Tribunal at [36]-[44] considered the nature of the household. The Tribunal at [36] stated that "the parties' household was tempestuous". The Tribunal at [39] noted the Sponsor's evidence that "the parties never formally lived together and spent very little time together throughout their relationship". The Tribunal at [44] found that "the parties provided inconsistent information about their household". The Tribunal at [44] "accept[ed] that the parties lived together for a time" but did "not accept that the parties lived together as the applicant claimed or that they shared the responsibility for housework".

22 The Tribunal at [45]-[54] considered the social aspects of the relationship. The Tribunal at [54] "accept[ed] that the parties represented themselves to other people as being married to each other and that they were seen as a married couple".

23 The Tribunal at [55]-[73] considered the nature of the parties' commitment to each other. The Tribunal at [56] and [58] noted:

(g) the applicant's claims against the Sponsor that the Sponsor psychologically abused the applicant, the Sponsor "used the visa application to control him by constantly threatening to cancel the visa application", and the Sponsor "never showed the applicant her commitment to the marriage"; and

(h) the Sponsor's claim against the applicant "that he married her for a visa outcome".

24 The Tribunal at [59] referred to the evidence of a witness who "could see that the marriage was not a partnership [or] a relationship or anything that resembled a genuine commitment for the right reasons".

25 The Tribunal at [55]-[70] reviewed other evidence before it concerning the nature of the parties' commitment to each other, including documents in which "the parties make serious allegations against and about each other" (at [73]), and "accus[e] each other of abusive

behaviour” (at [73]). The Tribunal at [73] found that “the parties provided inconsistent information about their relationship” and, even if the applicant provided some companionship and emotional support to the Sponsor, “there is no evidence that this was reciprocated by the sponsor”, and therefore “the Tribunal does not accept that the parties provided companionship and emotional support to each other or that they saw their relationship as long term”.

26 The Tribunal at [84] concluded that it was not satisfied “that at the time of application or at any other time the parties had a mutual commitment to a shared life to the exclusion of all others or that they had a genuine and continuing relationship”. It followed that the applicant did not satisfy cl 820.211(2)(a) of Schedule 2 to the Regulations.

PROCEEDINGS IN THIS COURT

Judicial review application and steps up to 29 April 2025

27 On 14 January 2021, the applicant lodged an application in this Court seeking judicial review of the Tribunal’s decision. On 18 August 2021, the applicant filed an amended application (**Amended Application**) which contained one ground as follows (as written):

1. The Tribunal failed to lawfully consider significant information relevant to the question of whether the applicant’s former marriage satisfied the requirements of paragraphs 5F(2)(b), (c) and (d) of the Migration Act.

Particulars

- (a) Text messages exchanged between the applicant and his former wife at CB 1069-1097.
- (b) Letters from Catherine Sinclair, psychologist, dated 4 July 2020 and 27 July 2020 (at CB 1385-1388).

28 Following a period of inactivity, on 19 February 2025 the parties were notified by the registry of the Court that the matter was listed for hearing on 29 April 2025.

29 On 31 March 2025, the applicant filed a written submission (**AS**).

30 On 15 April 2025, the first respondent filed a written submission (**RS**).

Hearing on 29 April 2025

31 At the hearing in this Court on 29 April 2025, Leonard Karp of counsel appeared for the applicant, and Greg Johnson of counsel appeared for the first respondent.

32 In relation to the grounds in the Amended Application, Mr Karp did not press particular (b)
and explained that the number “1097” in particular (a) should be “1162”.

33 A Court Book was tendered (CB) which contained the Tribunal’s decision and documents
before the Tribunal.

34 Mr Karp and Mr Johnson made oral submissions which supplemented their written
submissions. The submissions are addressed below.

CONSIDERATION

35 Among the large amount of evidence before the Tribunal was what appears to be a complete
copy of the exchange of text messages between the applicant and Sponsor from the time they
commenced communicating with each other in June 2016 to December 2016: see CB 1069-
1177.

36 In many of the messages, the Sponsor communicated “expressions of love and affection” (AS
[30]) to the applicant. For example:

- (i) On 1 July 2016, which may have been shortly prior to the first time the parties met,
they exchanged text messages saying “I love you”. (CB 1069)
- (j) On 4 July 2016, which was shortly after the parties first met, they exchanged text
messages, including “I love you”, “Miss you Habibi” and “I miss and love Lara”. (CB
1076-1077)
- (k) On 19 and 20 July 2016, which was between the date of the parties’ Islamic marriage
(on 9 July) and civil marriage (in early August), the parties exchanged text messages,
including the Sponsor sending the applicant a YouTube link to a song, the applicant
replying “I still love your heart more Habibi” and “I miss your lips”, and the Sponsor
replying “I miss yours too. I miss everything about you.” (CB 1096)
- (l) On 22 August 2016 (which was after the applicant and Sponsor married), the Sponsor
wrote: “Salam my sun and stars I can’t express in words how much I love you and
how grateful Allah brought you too me”. (CB 1116)
- (m) On 8 September 2016, the parties exchanged text messages, including the applicant
writing “Habibi I love you and miss you a lot. Wish now be between you arms” and
the Sponsor replying “I wish I was in your arms too”. (CB 1123)

37 It is contended in ground 1 that the Tribunal “failed to lawfully consider” the text messages to the extent they were “relevant to the question of whether the applicant’s former marriage satisfied the requirements of paragraphs 5F(2)(b), (c) and (d) of the Migration Act”.

38 The applicant’s written submission refines the contention in two ways as follows. First, it is contended that the text messages were particularly relevant to the matter in reg 1.15A(3)(d)(iii) of the Regulations, being “the degree of companionship and emotional support that the persons draw from each other”: see for example AS [25]-[26]. Second, Mr Karp accepts that the Tribunal “was clearly aware of” the text messages: AS [30]. The complaint is that, although the Tribunal was aware of the text messages, the Tribunal “neither understood nor appreciated the content of those text messages or their relevance to the applicant’s case” (AS [31]) or the Tribunal “did not recognise the significance of these text messages” (AS [30]).

39 Mr Karp’s complaint can be summarised as follows:

- (n) The text messages contain “expressions of love and affection” (AS [30]) by the Sponsor and applicant to each other, or representations indicating “considerable mutual affection” (AS [27]).
- (o) The Tribunal did not expressly refer to these particular text messages in its statement of reasons in the course of making a finding at [73] that, even if the applicant provided some companionship and emotional support to the Sponsor, “there is no evidence that this was reciprocated by the sponsor”.
- (p) Therefore, the Tribunal either overlooked or misunderstood the text messages in considering reg 1.15A(3)(d)(iii).

40 For the following reasons, I do not accept that the Tribunal overlooked or misunderstood the text messages in a manner which constituted jurisdictional error.

41 **First**, the Tribunal referred to the bundle of text messages, as well as particular text messages in the bundle, four times in its decision as follows:

- (q) The Tribunal stated at [29]:

After the applicant’s sister’s call, the sponsor on 22 November 2016, texted the applicant stating that she wanted to work things out.

- (r) The Tribunal stated at [52]:

The applicant provided the Tribunal with copies of text messages between the applicant and the sponsor’s mother and text messages between the parties. These have all been considered and some content is recorded in this

decision record.

(s) The Tribunal stated at [64]:

Other information related to text message exchanges between the parties. Some of these messages are difficult to read and others are undated. However, in one of these exchanges the applicant stated that the sponsor was not committed to the parties' marriage and didn't want him when he had no money. The sponsor responded and stated that she married the applicant because she loved him and didn't want him because they ran out of money. In another text message the applicant asked the sponsor to send him \$1,500 and she responded that she didn't have that much money and that she couldn't understand why he wouldn't ask his sister or parents for the money. In another text message the sponsor stated that trying to push someone to do something against their values won't work and she didn't want to be charged with a federal offence. Other messages relate to cross assertions about the parties' relationship. Various email exchanges between the parties have also been provided. The information in the text messages and emails has been considered.

(t) The Tribunal stated at [65]:

On 21 November 2016, the sponsor sent a text message to the applicant stating that she did not love him and she divorced him by stating 'I divorce you; I divorce you; I divorce you'.

42 The Tribunal in these paragraphs did not merely refer to the bundle of text messages as a whole. The Tribunal referred to specific messages. This supports a conclusion that the Tribunal read the bundle of text messages.

43 **Second**, the Tribunal at [64]-[65] expressly referred to the text messages in considering the matter in reg 1.15A(3)(d), being the nature of the parties' commitment to each other. Thus, the applicant cannot contend that the Tribunal did not consider the text messages in considering reg 1.15A(3)(d) as a whole.

44 **Third**, the Tribunal expressly stated at [52] that the text messages "have all been considered" and at [64] that "the information in the text messages ... has been considered". While "a general assertion of fact that a decision-maker has had regard to a certain matter is [not] conclusive evidence as to what was in fact done", "in the ordinary course, and subject to probative evidence to the contrary, the Court is entitled to treat the reasons as a statement of the matters the [decision-maker] in fact adverted to and took into account": *Burgess v Minister for Immigration and Border Protection* [2018] FCA 69; 259 FCR 197 at [85]. In the present case, no aspect of the Tribunal's decision suggests that the decision-maker did not consider all information in the text messages. There "is no reason to suppose that the Tribunal

does not mean what it says, and says what it means”: *W375/01A v Minister for Immigration and Multicultural Affairs* [2002] FCAFC 89; 67 ALD 757 at [16].

45 **Fourth**, as recorded in the Tribunal’s statement of reasons, the applicant’s case to the Tribunal was that “the sponsor married him for his money” (at [21], [22], [33] and [35]), “the sponsor didn’t want him but wanted the money she thought he had” (at [22]), “the sponsor was financially abusive from the beginning of the parties’ relationship” (at [23] and [34]), the Sponsor “used the visa application to control him by constantly threatening to cancel the visa application” (at [56]), the Sponsor “never showed the applicant her commitment to the marriage” (at [58]), and “the sponsor made false accusations against the applicant to cause him harm” (at [59]). As stated by Mr Johnson at RS [14], “on the applicant’s own case, the sponsor was engaged in deceptive behaviour in respect of their relationship”. Mr Johnson added in his oral submissions that, on the applicant’s case to the Tribunal, the Sponsor’s representations to him were a lie from the commencement of the relationship. With reference to *Plaintiff M1/2001 v Minister for Home Affairs* [2022] HCA 17; 275 CLR 582 (**Plaintiff M1/2001**) at [25], given this case put by the applicant to the Tribunal, it was not necessary for the Tribunal to set out the Sponsor’s representations in the text messages in considering “the degree of companionship and emotional support that” the Sponsor drew from the applicant. To put the point another way, there is a tension, if not an inconsistency, between the applicant’s claims to the Tribunal that the Sponsor deceived and financially abused the applicant from the outset, and the applicant’s contention to the Court that the Tribunal erred by not proceeding on the basis that the Sponsor’s representations in the text messages were true.

46 **Fifth**, the applicant provided to the Tribunal evidence from witnesses which supported his case to the Tribunal explained in the above paragraph. In particular, at CB 777-785 is a statutory declaration dated 6 September 2017 from a witness the Tribunal referred to as Ms E. Ms E stated: (CB 778)

Lara came to stay with me several times during her Workcover process. I learned a lot about her intentions during this time. I could see that marriage for her was not a partnership, a relationship or anything that resembled a genuine commitment for the right reasons ... There were many incidents that caused me concern ..

The Tribunal at [59] referred to this part of Ms E’s statutory declaration in considering the nature of the parties’ commitment to each other. Ms E also provided details of several of the “incidents that caused [her] concern” and caused her to hold the opinion expressed in the

extract above about the Sponsor's attitude to the marriage. The Tribunal at [65] summarised these incidents in considering the nature of the parties' commitment to each other.

47 **Sixth**, the Tribunal's statutory obligation under s 368(1) of the Act was to make a written statement that, in addition to setting out its decision and its reasons for the decision:

- (u) sets out the findings on any material questions of fact; and
- (v) refers to the evidence or any other material on which the findings of fact were based.

48 In the context of this statutory obligation, the "Tribunal is not required to refer to every piece of evidence placed before it": *Vo v Minister for Home Affairs* [2019] FCAFC 108; 269 FCR 566 at [43(6)]. Where the Tribunal does not refer to an item of evidence in its decision and an applicant seeks to persuade a court on a judicial review application that the Tribunal overlooked or failed to consider or have regard to the item of evidence:

- (w) An "applicant for judicial review of the Tribunal's decision, as the moving party, bears the onus of establishing jurisdictional error on the part of the Tribunal", and thus it falls to an applicant "to establish a basis for drawing the inference necessary to make out the alleged jurisdictional error": *Minister for Immigration and Citizenship v SZGUR* [2011] HCA 1; 241 CLR 594 at [67].
- (x) The "fact that particular evidence is not referred to in the tribunal's reasons does not necessarily mean that the material was overlooked": *Minister for Immigration and Border Protection v SZSRS* [2014] FCAFC 16; 309 ALR 67 (**SZSRS**) at [34].
- (y) A "court in considering a challenge to the tribunal's decision is generally entitled to infer that any matter not mentioned in the reasons was, at the very least, not considered by the tribunal to be material to its review": *SZSRS* at [33].
- (z) The "findings and evidence that the tribunal has set out in its reasons may be used as a basis for inferring that the matter or evidence in question was not considered at all" (*SZSRS* at [34]), or conversely that it was considered.

49 I consider that, taking into account:

- (aa) the applicant's case to the Tribunal explained in paragraph 44 above and the applicant's evidence in support of that case (including the evidence of Ms E referred to in paragraph 45 above); and
- (bb) the Tribunal's reasons at [73] (see paragraph 49 below),

(cc) a reason the Tribunal did not refer to the mutual expressions of love and affection in the text messages, in the course of considering “the degree of companionship and emotional support that the [applicant and Sponsor] draw from each other”, was because the Sponsor’s expressions of love and affection were not material to this issue. I agree with the first respondent’s submission at RS [14] that the Tribunal considered the text messages, including the assertions of love and affection by the Sponsor, consistently with the applicant’s own claims about the Sponsor’s attitude to the relationship.

50 **Seventh**, the Tribunal at [73] provided reasons in support of the conclusion in the last sentence of [73] that it “did not accept that the parties provided companionship and emotional support to each other or that they saw their relationship as long term”. The Tribunal stated:

The Tribunal accepts that the parties met virtually on 20 June 2016 and that they married in an Islamic ceremony on 9 July 2016 and by civil ceremony in August 2016. The parties make serious allegations against and about each other and respond to the allegations by denying them. The parties provided inconsistent information about their relationship. On one hand, the sponsor claimed that the parties ‘never formally lived together’ and spent very little time together throughout their relationship and the applicant visited her. She asserted that the applicant entered marriage for visa purposes and that she was abused by the applicant and fearful of him. On the other hand, the applicant claimed that the parties’ marriage was genuine and he lived with and was abused by the sponsor, who entered the marriage for financial gain. There is little evidence from the sponsor about the companionship and emotional support the parties drew from each other. Within months of the parties’ marriage the sponsor withdrew sponsorship for the partner visa application, then reinstated the sponsorship then withdrew it again. During the parties’ married relationship, they separated and reunited. Within approximately five months of the parties’ marriage they were living apart and a short time later, accusing each other of abusive behaviour and lodging TPOs against each other. While the Tribunal may accept that the parties lived together for a time, because of the inconsistent information about them living together, it does not accept that they lived together as the applicant claimed. Even if the Tribunal accepted that the applicant provided some companionship and emotional support to the sponsor, there is no evidence that this was reciprocated by the sponsor. The Tribunal does not accept that the parties provided companionship and emotional support to each other or that they saw their relationship as long term.

The Tribunal, in this paragraph, provided reasons in support of the conclusion in the last sentence of [73]. The reasons provide an “evident and intelligible justification” (*Singh v Minister for Home Affairs* [2019] FCAFC 3; 267 FCR 200 at [61]) for the conclusion in the last sentence. This point contributes to a conclusion that the representations in the text messages were not considered by the Tribunal to be material to this issue.

51 **Eighth**, if the applicant had contended before the Tribunal that the Sponsor’s expressions of love and affection in the text messages established or proved mutual companionship and

emotional support between the applicant and Sponsor at the commencement of the relationship, it might have been appropriate for the Tribunal to address this contention in its reasons for decision: see *Plaintiff M1/2001* at [25]. The applicant did not make this contention. Based on the placement of the bundle of text messages in the Court Book, it appears that the applicant first provided the text messages to the Tribunal in March 2018. In August 2020 (see CB 1352) and September 2020 (see CB 1418 and 1427), the applicant referred to the bundle of text messages in submissions to the Tribunal. But the applicant did not ask the Tribunal to expressly address the contention which the applicant now complains to the Court the Tribunal did not expressly address.

52 **Ninth**, Mr Karp relied on *SZOV v Minister for Immigration and Citizenship* [2011] FCA 1462; 125 ALD 38, but the facts of that case are distinguishable from the present case. In that case, the applicant and her family were from Fiji. The applicant was an indigenous Fijian, while her husband was of Indian ethnicity. The Tribunal, having accepted that the applicant and her family had experienced threats, harassment and other harm in Fiji, considered at [71]-[72] whether the harm was motivated by their inter-racial marriage or the husband's Indian ethnicity. The applicant and her husband gave evidence in statutory declarations of the content of verbal threats they received from neighbourhood Fijian boys (**Content Evidence**). The language of the threats suggested they were racially motivated. The Tribunal, in finding at [72] that the harm the family experienced was not racially motivated, did not refer to the Content Evidence, although the Tribunal had referred in an earlier part of its decision to documents recording the threats. Katzmann J accepted that the Tribunal did not have regard to the Content Evidence in finding that the harm was not racially motivated. However, this was in a context where, as found by Katzmann J, the Content Evidence was "direct evidence of racial antipathy" (at [38]) and "the only direct evidence on the point" (at [44]), and "all other evidence was circumstantial" (at [38]). In the present case, in contrast, representations in the text messages were neither direct evidence of "the degree of companionship and emotional support that the persons draw from each other" nor the only evidence on this issue.

COSTS

53 At the conclusion of the hearing, it was agreed I would hear submissions on costs following the delivery of judgment.

I certify that the preceding fifty-two

(52) numbered paragraphs are a true copy of the Reasons for Judgment of Judge Zipser.

Associate:

Dated: 19 May 2025